

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15551
[Redacted])	
Petitioner.)	DECISION
)	
)	

On February 12, 2001, the Sales Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination Refund Denial to [Redacted] (the taxpayer), denying the taxpayer's claim dated February 1, 2001, for a refund of \$137,315 in sales taxes for the reporting periods 1/1/98 through 8/31/00.

On April 13, 2001, a timely protest and petition for redetermination was filed by the taxpayer. An informal conference was requested by the taxpayer and held on May 28, 2002. Additional documentation was provided after the informal conference.

The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision MODIFYING the Notice of Deficiency Determination Refund Denial.

FACTS

Many retail stores offer customers so-called private label credit cards branded with the store name. The customer fills out a credit application and gets a card to use at the store. Other stores grant credit without a card, giving promotional financing on particular items, with terms such as zero interest for six months with minimum payments required. The customer buys goods at the store, charging his or her card or account for the price of the goods plus applicable sales tax. That total amount becomes the customer's debt. The store remits the sales tax to Idaho with the return covering the month of the sale.

The taxpayer provides financing for private label credit programs. The taxpayer agrees with the retailer to purchase the retail charge accounts on a nonrecourse basis, for their full face amount.

The retailers assign the accounts to the taxpayer. The assignment includes all rights relating to such accounts, including the right to any payments by the customers. It is not known whether the taxpayer's contracts expressly mention the right to sales tax refunds. The taxpayer profits when a customer chooses to pay the charges off over time, incurring interest charges of 19% or more.

The taxpayer does not maintain the detailed records of each original retail sale. The taxpayer does not know exactly what merchandise was sold, or whether sales tax was owed or paid by the retailer.

Some customers will not pay their charge accounts, and the taxpayer will collect what it can, treating the rest as worthless. The taxpayer takes a bad debt deduction of the worthless amounts for income tax purposes. If one assumes that each customer payment is prorated evenly over the outstanding debt and that sales taxes were paid on the transaction(s), then the worthless portion of the debt consists in part of sales tax amounts that Idaho has received, with the remainder being the unpaid sales price of goods and accumulated interest.

The taxpayer asserts that, by stepping into the retailer's shoes under the commercial law of assignments, for legal purposes, it paid the sales tax and is entitled to a refund as if it were the original retailer.

The taxpayer originally submitted a refund claim that included a spreadsheet showing the retail store's name and state, the gross amount written off as bad debt by that store in each month of the period covered by the claim, the amount of the write-off that was principal as opposed to interest in arrears, and an amount of sales tax to be refunded. The refund was computed by assuming that the principal consisted of merchandise and sales tax in a ratio of 1 to .05, or that Idaho sales tax was collected and paid over to Idaho on each of the sales in the claim.

The Sales Tax Audit Bureau denied the claim as noted above. After the informal conference, the Tax Commission agreed to apply a sampling analysis if the taxpayer would provide

additional documentation. The taxpayer revised its claim down to \$123,222 after eliminating certain obvious errors, such as retailers outside Idaho and service providers such as dentists.

To generate a sample, the taxpayer supplied an electronic spreadsheet showing every individual retail sale in the claim period. The auditor selected 200 of these sales and asked for detailed documentation of each retail sale to establish the exact amount of Idaho sales tax collected by the retailer and paid to the Tax Commission.

The taxpayer submitted a printout of the taxpayer's records for 112 sales out of the 200. The taxpayer's records do not state the nature of the merchandise or service sold, but they do break out principal and accumulated interest. Where additional documentation was submitted (see below), the auditor noted discrepancies in the printout, such as store locations that differed from underlying sales invoices, with some sales by stores outside Idaho included in the printout as Idaho sales. In some cases, the amount of the original sale in the printout exceeded the amount of the original invoices less collections. These errors make the taxpayer's records unreliable due to poor quality of input data. Recourse to underlying sales documentation is necessary.

Credit contracts were provided for 19 customers who bought large-ticket items such as motorcycles and electronic equipment. Some of these contracts showed the merchandise in question and the sales tax; these were accepted as valid documentation. Defects included the following: Some contracts were for sales outside the period of the claim. Some contracts were with stores in other states. Some contracts showed no tax collected. Some of the contracts showed "invoice no. XX," without describing the merchandise and showing the tax amount, and the invoice was not provided. Some of the contracts were marked "paid."

The sample of 200 sales would have generated a refund of \$13,763.26 if it had been fully documented. The documentation submitted is valid for \$817.00 in sales tax refunds, thus generating a validity rate of 5.94% within the sample. Applying this validity rate to the revised claim of

\$123,222, the Tax Commission allows a refund of \$7,315.

Interest is allowed, computed by dividing the claim into calendar year periods. For the calendar year in which the bad debt was written off, half a year's interest is allowed. Interest on the same amount for years after the year in which the debt was written off is simple interest. This treats all claims as if they arose approximately in the middle of each year.

ANALYSIS

The deduction for bad debts is provided by Idaho Code § 63-3613(d). A finance company has standing to claim a refund of sales taxes originally collected and remitted by a retailer. IDAPA 35.01.02.063.07. With the law not in dispute, this protest raises only issues of documentation.

The taxpayer agreed to abide by a sampling analysis as described above, so the validity of the sample is not in dispute.

By stepping into the retailer's shoes, the taxpayer bears the same documentation burden that the retailer would bear. The standards of documentation are set by common sense, so that the Tax Commission can be assured that tax was actually collected by the retailer and remitted to the Tax Commission. In cases of doubt, the taxpayer has the burden of proving its entitlement to the refund. The defects described above cause the Tax Commission to doubt whether the tax was collected and remitted in the case of the rejected sales in the sample.

CONCLUSION

WHEREFORE, the Notice of Deficiency Determination Refund Denial dated February 12, 2001, is hereby MODIFIED, and as so modified, is hereby APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer receive a refund of the following taxes and interest (computed through 01/07/03)(interest runs at \$1.40 per day in 2002 and

at \$1.00 per day in 2003):

<u>YEAR</u>	<u>TAX REFUND</u>	<u>INTEREST</u>	<u>TOTAL</u>
12/31/98	\$2,003	\$669	\$2,672
12/31/99	1,811	468	2,279
12/31/00	2,487	456	2,943
03/31/01	1,014	135	<u>1,149</u>
		TOTAL REFUND	<u>\$9,043</u>

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt # [Redacted]